

No. _____

ESTATE OF CHRISTOPHER J. DAVIS, and
DORETHA LOCK,
as the Special Administrator of
the Estate of Christopher J. Davis,

Plaintiff-Appellee,

v.

JUAN ORTIZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Wisconsin
Case No. 18-CV-01846-JPS
The Honorable J. P. Stadtmueller

SEVENTH CIRCUIT RULE 3(c) DOCKETING STATEMENT

Defendant-Appellant Juan Ortiz, by his attorneys, CRIVELLO CARLSON, S.C., by Attorney Samuel C. Hall, Jr., respectfully submits this Docketing Statement pursuant to Circuit Rule 3(c)(1) of the United States Court of Appeals for the Seventh Circuit.

This is an appeal from a denial of a Rule 56(a) Motion for Summary Judgment in a police shooting case, which was entered on November 25, 2019, by the district court. The underlying action was brought pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1983, alleging a violation of the Fourth Amendment of the United States Constitution by Defendant, Juan Ortiz. The Notice of Appeal was filed on November 26, 2019. There were no related motions filed prior to the Notice of Appeal.

Statutory authority for appellate jurisdiction is found generally in 28 U.S.C. § 1291 and 28 U.S.C. § 1294. The district court found that Juan Ortiz was not entitled to qualified immunity on the question of whether the Fourth Amendment is applicable to the Estate's claim against Ortiz, despite the undisputed fact that Ortiz did not intentionally target or aim at Christopher Davis at the time of the shooting, (ECF No. 129 at 7, 10). Pursuant to precedent in this Court and the United States Supreme Court, such a denial of qualified immunity is immediately appealable.

The denial of qualified immunity is a "final" order in that it denies a defendant's right to stand trial on this issue. As a result, the decision cannot be reviewed after trial, because by that time, the right would have been lost. The denial of qualified immunity is considered separate from the merits of the underlying action, because this Court would not be faced with the question of the denial of qualified immunity again following trial. *See, e.g., Behrens v. Pelletier*, 516 U.S. 299, 315 (1996) (holding that the denial of summary judgment on grounds of qualified immunity is immediately appealable).

In the district court, Juan Ortiz's Motion for Summary Judgment sought the dismissal of all claims against him based upon qualified immunity and on the merits. This Motion was denied as it relates to Plaintiffs'-Appellees' claim for excessive force. At summary judgment, Juan Ortiz argued that Plaintiffs'-Appellees' excessive force claim was not cognizable because a seizure had not occurred under the Fourth Amendment. Juan Ortiz further argued that he was entitled to qualified immunity because the law is not clearly established as to whether a Fourth-Amendment seizure occurs when an officer uses deadly force and unintentionally strikes a

passenger in a vehicle. These arguments were rejected while also recognizing the undisputed fact that Ortiz did not intentionally target Mr. Davis at the time of the shooting.

Walworth County, Sheriff Kurt Picknell, the Town of East Troy, the Village of East Troy, James Surges, Alan Boyes, Jeremy Swendrowski, Paul Schmidt, Craig Knox, Jeff Price, Aaron Hackett, Wisconsin Municipal Mutual Insurance Company, Employers Mutual Casualty Company, and American Alternative Insurance Corporation all brought motions for summary judgment as to all of Plaintiffs'-Appellees' claims. Those motions were granted in full.

The sole claim that survived summary judgment is the Fourth Amendment excessive-force claim against Juan Ortiz.

Additionally, state-law wrongful death claims against Defendants Jose G. Lara and Roberto Juarez-Nieves, Jr. remain, subject to a motion for default judgment, as those parties are in default.

Dated this 26th day of November, 2019.

By: /s/ Samuel C. Hall, Jr.
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